

### REMARKS

Receipt of the Office Action of January 22, 2004 is gratefully acknowledged.

Claims 38 - 48 are pending and these have been examined. As a result of this examination, the examiner has: (1) objected to claim 41 because the phrase "data carrier" "has a specific meaning (term of art) which is not intended by the Applicant;" (2) rejected claims 46 - 48 under 35 USC 101 because these claims recite "non-statutory subject matter;" (3) rejected claim 40 as indefinite under 35 USC 112, second paragraph ; (4) rejected claims 38 - 45 as anticipated by Banks under 35 USC 102(b); and (5) rejected claims 41 - 43 as unpatentable under 35 USC 103(a) over Banks in view of Tabak and Tucker.

Claim 40 has been canceled thereby rendering (3) above moot. As to (1), (2), (4) and (5), applicant respectfully submits there traverse.

As to (1) the phrase "data carrier" is simply a memory which is not inconsistent with its generally accepted meanings. The corresponding German phrase was "Datenträger" which translated literally means Daten or Data, and Träger or carrier. If the examiner prefers a different, but consistent definition, applicant is prepared to utilize it. The point is, however, that the translation relied upon is proper and acceptable everywhere for the way it is being used here.

As to (2) what applicant is claiming is "a control unit" and a "control unit" is structural and therefore statutory under 35 USC 101. There may very well be thousands of patents where the claims are directed to "control units." Hopefully, the above amendment to claim 46 will remove this rejection.

As to (4) and (5), claim 38 has been replaced with new claim 49. New claim 49 defines the software model as "stored in the field device" and 'loadable via the bus in the central control unit." Also, claim 49 recites that the control unit is adapted "so that the field device with

which said software apparatus model is associated can be simulated in the central control unit.”

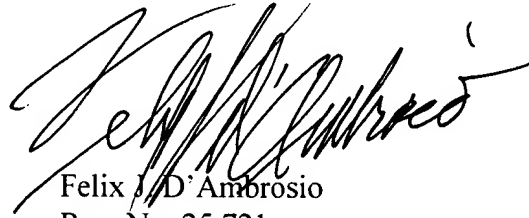
We do not find these specific in Banks, nor in Tabak or Tucker.

It is respectfully submitted that claims 39, 41 and 43 - 50 should now be allowed.

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Respectfully submitted,

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